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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,013	03/22/2006	Hiromasa Iwashita	25040-1611	2507

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EXAMINER

MAI, TRI M

ART UNIT	PAPER NUMBER
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3781

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/573,013	Applicant(s) IWASHITA ET AL.	
	Examiner Tri M. Mai	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2-3, "the cross-sectional shape of the body rotates" is confusing. It seems the cross-section shape" does not rotate. It seems that the body is twisted about vertical central axis. The term "the cross-sectional shape" denotes a two dimensional planar shape, and it does not rotate. Similar issue is with claim 4.

In claim 4, the recitation "the cross-sectional shape at the shoulder...wherein the cross sectional shape is not rotated" is confusing. It seems that fig. 1 show the shoulder at 3 is being twisted.

The term "six angles" polygon is confusing. Should be six-sided polygon.

2. Claims 1-4 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender (D168932) in view of Sudbeaz (2858558) or Trabattoni (D293944) . Frydlender teaches a bottle having a shoulder, a body, bottom, a cross sectional shape at the body is a regular polygon, each angle of the polygon is rounded off and an arc as claimed (there is a small rounded corner noticeable in Fig. 4). The cross-sectional shapes have the same shape at any portion of the body. Frydlenders has a circle circumscribed about the cross sectional shape as claimed, i.e, the apex of the angle rotate to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

Either Sudbeaz or Trabattoni teaches that it is known in the art to make a bottle from either plastic or glass (Sudbeaz, col. 2, ln. 25). It would have been obvious to one of ordinary

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skill in the art to make the bottle from either plastic or glass to provide the desired material for the bottle.

Regarding claim 2, it would have been obvious for one of ordinary skill in the art to provide the rotation angle as claimed. A change in size/proportion is generally recognized as being within the level of ordinary skill in the art. (see In re Rose, 105 USPQ 237 (CCPA 1955), and In re Tanczyn, 44 CCPA 704, 766, 241)

Regarding claim 3, note the apex of the angle twists to the next angle thus creating a circle circumscribed about the cross sectional shape as claimed.

3. Claim 1-4 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender rejection, as set forth above, and further in view of either Herrmann et al. (D520432) or O'Reilly (D328 432). To the degree it is argued that that Frydlender does not teach the arc at the each angle. It would have been obvious for one of ordinary skill in the art to provide round edges at the corner as taught by either Herrmann et al. or O'Reilly, to provide added safety from sharp edges.

4. Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Frydlender, as set forth in paragraphs 3 and 4, and further in view of Sugiura (5928742). It would have been obvious for one of ordinary skill in the art to make the bottle from PET as taught by Sugiura to provide the desired plastic for the bottle.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frydlender, as set forth in paragraphs 3 and 4, and further in view of either Ota or Rumney. It would have been obvious to one of ordinary skill in the art to provide a hexagonal bottle to provide the desired shape for the bottle. A change in shape would have been an obvious matter, since the claimed is

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nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious. (See *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459).

Matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In *re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

6. Applicant's arguments filed have been fully considered but they are not persuasive. In the Frydlender bottle, applicant asserts that the bottle does not have any arc at each angle. The examiner submits that there is an arc at each corner of Frydlender. Applicant's definition of a arc is broad that a bottle with a cross section with 32 sides would have small arc corners. Thus, the arc at each angle in Frylender is an arc as claimed. The neck and shoulder are shown when the closure is removed in Fig. 2. Frylender also teaches a neck and a shoulder similar to that of applicant, note the polygonal protrusion at the center of the shoulder in Fig. 2. Applicant further asserts that Hermann appears thin about the middle. The examiner submits that the limitation about the cross sectional shapes are identical is taught by the main reference to Frydlender. The examiner applied the Hermann reference solely for the teaching of having round corners.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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